

Overview of revised EU Code of Practice for Disinformation

Drafting process

- In May 2021, the European Commission (EC) published [a guidance document](#) on how the EU Code should be strengthened by the signatories.
- The original signatories, major online platforms and advertising trade associations active in the EU, and other prospective signatories, participated in a confidential process to review the code.
- The drafting process was facilitated by the signatories, as well as consultants Valdani, Vicari and Associates (VVA) and Oreste Pollicino.

List of signatories

The revised EU code includes 34 signatories. It remains open for additional signatories to join.

Major platforms	1. Google 2. Meta 3. Twitter 4. TikTok 5. Microsoft
Industry groups	6. DOT Europe ¹
Trade associations	7. World Federation of Advertisers (WFA) 8. European Association of Communications Agencies (EACA) 9. Interactive Advertising Bureau (IAB Europe) 10. Kreativitet & Kommunikation
Online video streaming	11. Twitch 12. Vimeo
Social networks	13. Clubhouse 14. The Bright App
Web portal	15. Seznam 16. Neeva Search
Fact-checkers	17. Maldita 18. PagellaPolitica 19. Demagog 20. Faktograf
Advertising tech providers	21. MediaMath 22. DoubleVerify
Advertising industry initiative	23. GARM
Civil society and research	24. Avaaz 25. Globsec 26. Reporters without Borders 27. VOST Europe
Tech solutions and expertise	28. Adobe 29. Crisp Thinking 30. Kinzen 31. Logically 32. Newsback 33. NewsGuard 34. WhoTargetsMe

¹ DOT Europe is the European trade association representing the leading internet companies in Europe. DOT Europe has adopted Commitment 37 (Measures 37.1 to 37.6) and Commitment 38.

- 11 of these signatories would likely fall within the strict scope of the AU code, which currently only applies to services that deliver user-generated content or content that is returned by a search engine. Adobe has signed up to both codes, noting it could be argued that they do not strictly fall within the scope of the AU code.
- Some key platforms have not signed the revised EU code, including Spotify, Reddit, and Yahoo. Apple and Redbubble are also not signatories. Mozilla, a previous signatory, has not signed up to the strengthened code.

Key changes

- The scope of the revised EU code has been broadened to include misinformation. Misinformation is defined as ‘false or misleading content shared without harmful intent though the effects can be still harmful, e.g. when people share false information with friends and family in good faith’. The definition of ‘disinformation’ has also changed to ‘false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm’.² There is no serious and imminent limitation to the definition of harm.
- The code has broader participation and an increased number of commitments. The 2022 code includes 34 signatories, 44 commitments and 127 specific measures. The 2018 code included 16 signatories and 21 commitments.
- The code includes expanded opt-in commitments aimed at defunding disinformation across advertising content, including greater scrutiny of the advertising supply chain and more transparency and controls to those placing ads online.
- The code includes further opt-in options for signatories to ensure the transparency of political advertising, including improvements in repositories of political and issue-based ads and appropriate identity verification systems for sponsors of political and issue-based ads.
- There are more comprehensive opt-in commitments for current and emerging forms of manipulative behaviour used to spread disinformation, e.g. bots, fake accounts, organised manipulation campaigns, account takeovers, malicious deep fakes.
- Signatories can commit to better equipping users to identify and react to disinformation, with labelling to be made more available, more functions to flag disinformation, safe design practice.
- Signatories with messaging platforms can implement features that aim to limit disinformation. The code is clear that these measures do not encroach on a users’ privacy or message encryption.
- Signatories can commit to developing a more transparency appeals mechanism for users affected by decisions regarding their content.
- The code provides a pathway to a co-regulatory model for Very Large Online Platforms (VLOPs) once the Digital Services Act commences in 2024 (vs fully self-regulation model for 2018 code). VLOPs are defined as platforms with more than 10% of the 450 million consumers in the EU.
- There are some improvements in reporting framework, including list of basic quantitative and qualitative KPIs specified by the EC.
- The code requires a new Transparency Centre and new Task Force to be set up to oversee the code.

² Previously defined as ‘verifiably false or misleading information which, cumulatively, (a) is created, presented and disseminated for economic gain or to intentionally deceive the public, and (b) may cause public harm, intended as threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens’ health, the environment or security’.

Task Force and Transparency Centre

- A new Task Force will be set up to keep the code future proof and fit for purpose. It will be made up of code signatories, representatives from European Digital Media Observatory (EDMO) and the European Regulators Group for Audiovisual Media Services (ERGA), and will be chaired by the EC. It will follow consensus-based decision-making model.
- The Task Force will have a strong monitoring remit based on regular reporting and multiple service-level indicators. The Task Force will develop service indicators and metrics to measure the effectiveness of signatory’s performance and the overall success of the code in their first year.
- The Task Force will also monitor technological, industry and legislative developments, and adapt the commitments as needed. It will meet at least every 6 months.
- A public Transparency Centre will also be developed to provide regular updates on the implementation of the code’s measures.

Relationship with Digital Services Act

- The [Digital Services Act](#) (DSA) includes mandatory obligations on VLOPs to mitigate risks relating to the spread of illegal content, including disinformation.
- Following the commencement of the DSA, the EU Code will have different purposes and enforcement remedies, depending on whether an organisation is a VLOP.

	Digital Services Act		EU Code
VLOPs	<p style="text-align: center;">✓</p> <p>Legislations to commence in 2024 including mandatory obligations on VLOPs to mitigate risks relating to the spread of illegal content, including disinformation.</p>	→	<p style="text-align: center;">✓</p> <p>As a way to fulfil DSA obligations, VLOPs can sign up to the code and use this as one of their disinformation mitigation measures.</p> <p>VLOPs’ activities will be overseen by the EC, which will be given enforcement powers.</p> <p>Complaints about a VLOP’s performance under the code can be made to the EC and relevant Member States.</p>
Other participants	<p style="text-align: center;">X</p> <p>Obligations for mitigating disinformation will not apply.</p>	→	<p style="text-align: center;">✓</p> <p>Other, smaller participants can continue to sign up to the voluntary code and use it as a way to provide public transparency to their work.</p> <p>As these organisations are not mandated under the DSA, there will be no enforcement mechanism.</p>

- The revised EU code has been developed with the intention to become a co-regulatory code of conduct when the DSA commences in 2024. The code lays the foundation for a separation between VLOPs and other signatories.

- Disinformation-specific activity under the DSA will be overseen by a new European Board of Digital Services and the EC, which has been given relevant enforcement powers, including the ability to impose fines of up to 6% of a service’s global turnover.
- The code also complements [proposed rules](#) on transparency and targeting of political ads. These rules are complementary to the DSA and are an initiative under the broader European Democracy Action Plan.

Complaints

- The revised code broadens commitments for signatories to publish relevant data on their complaints management. All these commitments are opt-in.
- Commitment 24 requires signatories to provide users whose content or accounts have been subject to enforcement actions with avenues to appeal, and complaints must be handled in a timely and transparent manner. Such measures are not provided at a signatory-level under the AU code.
- Signatories who have signed up to Commitment 24 include Google (YouTube), Meta (Facebook, Instagram), Microsoft (LinkedIn), TikTok, Twitch, Twitter and Vimeo.
- Measure 22.6 also requires signatories to publish relevant statistics and analysis of their complaints management.
- Once the DSA commences, Article 43 will provide individuals with the right to lodge administrative complaints about VLOPs to relevant Digital Service Coordinator in their respective country. Article 17 also requires VLOPs to introduce a complaints-handling system for their illegal content moderation decisions, and for complaints not resolved under this system, platforms must provide an out-of-court body settlement.

Transparency

Signatory commitments

- Upon signing the code, signatories are required to submit [a nomination form](#) that outlines the code outcomes and measures they are committing to, and which services they have put forward under each commitment. Signatories must confirm whether they are continuing their commitments (or adjusting) on an annual basis.
- Where relevant, signatories must also provide a brief statement why they are not opting-in to outcomes. This provides greater certainty of the code and a clearer indication of what is being covered.
- While this is a stronger framework, we have observed that some signatories (particularly new, smaller ones), have provided little justification for opting out of some commitments, making it appear as more of a ‘sign up to what you want’ model.

Reporting framework

- The code now includes a new reporting framework. Under specified code measures are a range of qualitative reporting elements (QREs) and quantitative service-level indicators (SLIs). These KPIs are also opt-in, i.e. a signatory can choose which KPIs to report on.
- It is not clear how these KPIs were developed, however the consultants involved in the process have previously provided measurement advice to the EC. Formal definitions are also not provided in the code.
- Signatories will be required to report annually against the QREs and SLIs they have opted-in to. Once the DSA comes into effect, VLOPs will be required to report every 6 months.
- The Task Force will develop a simplified reporting template for signatories.

- Our initial view is that these metrics are relatively broad, requiring platforms to describe processes or provide high level data. For example under Measure 22.1, signatories provide their respective users with trustworthiness indicators so that they can make informed choices and engagement with information sources. The related QRE asks signatories to report on how they enable their users to benefit from such indicators, and the SLI asks signatories to report on Member State level percentage of users that have enabled the trustworthiness indicators.
- Many of the QREs are essentially seeking descriptions about how a signatory will implement the measures, rather than providing qualitative information about the impact of measures. For example, QRE 1.4.1 asks signatories that are responsible for the buying of advertising to describe their processes and procedures.
- Overall, we consider the framework is an improvement and note it will be supported by still to be developed metrics to measure the overall effectiveness of the code.
- Signatories commitment to providing country- and language-specific European information is a significant step. We expect that platforms should be able to provide similar information in Australia.

Next steps

- Signatories will have 6 months to implement the commitments and measures to which they have signed up to.
- At the beginning of 2023, signatories will provide the European Commission with their first implementation reports, which will contain baseline figures.
- Once the DSA comes into effect in 2024, VLOPs will be required to report every 6 months; others will report on a yearly basis.
- The European Commission will regularly assess the progresses made in the implementation of the code, with support from ERGA and EDMO.